

ENTERED

January 09, 2019

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

COLLINS O. NYABWA,

Plaintiff,

VS.

CITY OF CORPUS CHRISTI,

Defendant.

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CIVIL ACTION NO. 2:18-CV-103

ORDER ADOPTING MEMORANDUM AND RECOMMENDATION

Before the Court is Plaintiff Collins O. Nyabwa's motion to reconsider the Court's dismissal of his claims against Defendant City of Corpus Christi (D.E. 38). On December 4, 2018, United States Magistrate Judge B. Janice Ellington issued a Memorandum and Recommendation (M&R, D.E. 41), recommending that Plaintiff's motion to reconsider be denied. Plaintiff timely objected. D.E. 44. Plaintiff's objections are addressed below.

In his objections, Plaintiff largely reiterates the arguments made in his motion to reconsider. He objects to the M&R on the following grounds:

- 1) The Magistrate Judge, along with the Fifth Circuit and its associated courts, operate an extremely hostile and broken court system that routinely and unfairly dismisses complaints by pro se litigants;
- 2) The Magistrate Judge erred in concluding that Plaintiff's retaliation claim against the Department of Homeland Security (DHS) was raised for the first time in his motion to reconsider;
- 3) The Magistrate Judge failed to apply the holding of *Carpenter v. United States*, 138 S. Ct. 2206 (2018), in finding that Plaintiff is not entitled to discovery in this case;

4) The Magistrate Judge unfairly subjected his claims to a heightened pleading standard; and

5) The Magistrate Judge failed to consider new evidence that corroborates his claim that Defendant is surveilling him in violation of his civil rights.

Plaintiff's first, third, and fourth objections are nothing more than repetition of matters previously raised and adjudicated. Thus, Plaintiff's first, third, and fourth objections are OVERRULED.

Regarding Plaintiff's second objection, the Magistrate Judge correctly observed that his retaliation claim was not included in his pleadings and properly held that a Rule 59(e) motion cannot be used to raise arguments that could have been raised before the entry of judgment. *See Edionwe v. Bailey*, 860 F.3d 287, 295 (5th Cir. 2017) (citations omitted). Thus, Plaintiff's second objection is OVERRULED.


With respect to Plaintiff's fifth objection, Plaintiff cites to recent media reports regarding surveillance of politically active immigrants by DHS and local law enforcement. D.E. 38, pp. 8, 14. The Magistrate Judge correctly found that this "new evidence" is nothing more than speculative discussion that has no bearing on Plaintiff's allegations against Defendant. Thus, Plaintiff's fifth objection is OVERRULED.

CONCLUSION

Having reviewed the findings of fact and conclusions of law set forth in the Magistrate Judge's M&R, as well as Plaintiff's objections, and all other relevant documents in the record, and having made a de novo disposition of the portions of the Magistrate Judge's M&R to which objections were specifically directed, the Court

OVERRULES Plaintiff's objections and ADOPTS as its own the findings and conclusions of the Magistrate Judge. Thus, Plaintiff's motion to reconsider (D.E. 38) is DENIED.

ORDERED this 9th day of January, 2019.


NEELVA GONZALES RAMOS
UNITED STATES DISTRICT JUDGE